

State of Arizona  
Senate  
Fifty-first Legislature  
First Regular Session  
2013

# SENATE BILL 1341

AN ACT

AMENDING SECTIONS 46-451 AND 46-456, ARIZONA REVISED STATUTES; RELATING TO  
ADULT PROTECTIVE SERVICES.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 46-451, Arizona Revised Statutes, is amended to  
3 read:

4 46-451. Definitions; program goals

5 A. In this chapter, unless the context otherwise requires:

6 1. "Abuse" means:

7 (a) Intentional infliction of physical harm.

8 (b) Injury caused by negligent acts or omissions.

9 (c) Unreasonable confinement.

10 (d) Sexual abuse or sexual assault.

11 2. "De facto conservator" means any person who takes possession of the  
12 estate of a vulnerable adult, without right or lawful authority. A de facto  
13 conservator is subject to all of the responsibilities that attach to a  
14 legally appointed conservator or trustee.

15 3. "De facto guardian" means any person who takes possession of the  
16 person of a vulnerable adult, without right or lawful authority. A de facto  
17 guardian is subject to all of the responsibilities that attach to a legally  
18 appointed guardian.

19 4. "Exploitation" means the illegal or improper use of a vulnerable  
20 adult or his resources for another's profit or advantage.

21 5. "Informed consent" means any of the following:

22 (a) A written expression by the person that the person fully  
23 understands the potential risks and benefits of the withdrawal of food,  
24 water, medication, medical services, shelter, cooling, heating or other  
25 services necessary to maintain minimum physical or mental health and that the  
26 person desires that the services be withdrawn. **A WRITTEN EXPRESSION IS VALID  
27 ONLY IF THE PERSON IS OF SOUND MIND AND IF THE CONSENT IS WITNESSED BY AT  
28 LEAST TWO INDIVIDUALS WHO DO NOT BENEFIT BY THE WITHDRAWAL OF SERVICES.**

29 (b) Consent to withdraw food, water, medication, medical services,  
30 shelter, cooling, heating or other services necessary to maintain minimum  
31 physical or mental health as permitted by an order of a court of competent  
32 jurisdiction.

33 (c) A declaration made pursuant to title 36, chapter 32.

34 (d) Consent by another person under a durable power of attorney  
35 relating to health care services to withdraw food, water, medication, medical  
36 services, shelter, cooling, heating or other services necessary to maintain  
37 minimum physical or mental health.

38 6. "Neglect" means a pattern of conduct without the person's informed  
39 consent resulting in deprivation of food, water, medication, medical  
40 services, shelter, cooling, heating or other services necessary to maintain  
41 minimum physical or mental health.

42 7. "Protective services" means a program of identifiable and  
43 specialized social services that may offer social services appropriate to  
44 resolve problems of abuse, exploitation or neglect of a vulnerable adult.

1           8. "Protective services worker" means a person who has been selected  
2 by and trained under the requirements prescribed by the department to provide  
3 protective services.

4           9. "Vulnerable adult" means an individual who is eighteen years of age  
5 or older and who is unable to protect himself from abuse, neglect or  
6 exploitation by others because of a physical or mental impairment.  
7 Vulnerable adult includes an incapacitated person as defined in section  
8 14-5101.

9           B. Protective services programs shall seek to maintain the adult in  
10 his familiar environment by strengthening his capacity for self-maintenance  
11 or by providing supportive services.

12           C. Nothing in this section shall be construed to mean that an adult is  
13 abused, neglected or in need of protective services for the sole reason that  
14 he relies on treatment from a recognized religious method of healing in lieu  
15 of medical treatment.

16           ~~D. A written expression pursuant to subsection A, paragraph 5,  
17 subdivision (a) of this section is valid only if the person is of sound mind  
18 when the consent is made and if the consent is witnessed by at least two  
19 individuals who do not benefit by the withdrawal of services.~~

20           D. FOR THE PURPOSES OF THIS SECTION, A PERSON IS NOT EXPLOITED BY A  
21 TRANSFER OF ASSETS IF THE TRANSFER IS TO OBTAIN OR MAINTAIN ELIGIBILITY FOR  
22 BENEFITS UNDER TITLE 36, CHAPTER 29 OR BENEFITS FOR SUPPLEMENTAL SECURITY  
23 INCOME, MEDICARE OR VETERANS' ADMINISTRATION PROGRAMS AND THE TRANSFER OF  
24 ASSETS IS BETWEEN THE PERSON AND ANY OF THE FOLLOWING:

- 25           1. THE PERSON'S SPOUSE.
- 26           2. THE PERSON'S DISABLED CHILD.
- 27           3. A TRUST FOR THE BENEFIT OF THE PERSON'S SPOUSE OR DISABLED CHILD.

28           E. A TRANSFER OF ASSETS FOR THE PURPOSE OF OBTAINING OR MAINTAINING  
29 ELIGIBILITY FOR BENEFITS UNDER TITLE 36, CHAPTER 29 SHALL COMPLY WITH 42  
30 UNITED STATES CODE SECTION 1396p AND SECTIONS 36-2934 AND 36-2934.01.

31           Sec. 2. Section 46-456, Arizona Revised Statutes, is amended to read:  
32           46-456. Duty to a vulnerable adult; financial exploitation;  
33                                   civil penalties; exceptions; definitions

34           A. A person who is in a position of trust and confidence to a  
35 vulnerable adult shall use the vulnerable adult's assets solely for the  
36 benefit of the vulnerable adult and not for the benefit of the person who is  
37 in the position of trust and confidence to the vulnerable adult or the  
38 person's relatives unless ~~either~~ ANY of the following applies:

- 39           1. The superior court gives prior approval of the transaction.
- 40           2. The transaction is specifically authorized in a valid durable power  
41 of attorney that is executed by the vulnerable adult as the principal or in a  
42 valid trust instrument that is executed by the vulnerable adult as a settlor.

43           3. THE TRANSACTION IS REQUIRED IN ORDER TO OBTAIN OR MAINTAIN  
44 ELIGIBILITY FOR SERVICES UNDER TITLE 36, CHAPTER 29.

1           4. THE PERSON IN THE POSITION OF TRUST AND CONFIDENCE TO THE  
2 VULNERABLE ADULT IS THE VULNERABLE ADULT'S SPOUSE AND THE TRANSACTION  
3 FURTHERS THE INTEREST OF THE MARITAL COMMUNITY, INCLUDING APPLYING FOR  
4 BENEFITS PURSUANT TO TITLE 36, CHAPTER 29 OR BENEFITS FOR SUPPLEMENTAL  
5 SECURITY INCOME, MEDICARE OR VETERANS' ADMINISTRATION PROGRAMS.

6           B. A person who violates subsection A of this section or section  
7 13-1802, subsection B shall be subject to actual damages and reasonable costs  
8 and attorney fees in a civil action brought by or on behalf of a vulnerable  
9 adult and the court may award additional damages ~~for~~ IN an amount up to two  
10 times the amount of the actual damages.

11           C. In addition to the damages prescribed in subsection B of this  
12 section, the court may:

13           1. Order a person who violates subsection A of this section or section  
14 13-1802, subsection B to forfeit all or a portion of the person's benefits  
15 under title 14, chapter 2 with respect to the estate of the vulnerable adult,  
16 including an intestate share, an elective share, an omitted spouse's share,  
17 an omitted child's share, a homestead allowance, any exempt property and a  
18 family allowance. If the vulnerable adult died intestate, the vulnerable  
19 adult's intestate estate passes as if the person who violated subsection A of  
20 this section or section 13-1802, subsection B disclaimed that person's  
21 intestate share to the extent the court orders that person to forfeit all or  
22 a portion of the person's benefits under title 14, chapter 2.

23           2. Revoke, in whole or in part, any revocable:

24           (a) Disposition or appointment of property that is made in a governing  
25 instrument by the vulnerable adult to the person who violates subsection A of  
26 this section or section 13-1802, subsection B.

27           (b) Provision by the vulnerable adult that is contained in a governing  
28 instrument that confers a general or nongeneral power of appointment on the  
29 person who violates subsection A of this section or section 13-1802,  
30 subsection B.

31           (c) Nomination or appointment by the vulnerable adult that is  
32 contained in a governing instrument that nominates or appoints the person who  
33 violates subsection A of this section or section 13-1802, subsection B to  
34 serve in any fiduciary or representative capacity, including serving as a  
35 personal representative, executor, guardian, conservator, trustee or agent.

36           3. Sever the interests of the vulnerable adult and the person who  
37 violates subsection A of this section or section 13-1802, subsection B in any  
38 property that is held by them at the time of the violation as joint tenants  
39 with the right of survivorship or as community property with the right of  
40 survivorship, and transform the interests of the vulnerable adult and the  
41 person who violated subsection A of this section or section 13-1802,  
42 subsection B into tenancies in common. To the extent that the person who  
43 violated subsection A of this section or section 13-1802, subsection B did  
44 not provide adequate consideration for the jointly held interest, the court

1 may cause the person's interest in the subject property to be forfeited in  
2 whole or in part.

3 D. A revocation or a severance under subsection C, paragraph 2 or 3 of  
4 this section does not affect any third party interest in property that was  
5 acquired for value and in good faith reliance on apparent title by  
6 survivorship in the person who violated subsection A of this section or  
7 section 13-1802, subsection B unless a writing declaring the severance has  
8 been noted, registered, filed or recorded in records that are appropriate to  
9 the kind and location of the property and that are relied on as evidence of  
10 ownership in the ordinary course of transactions involving that property.

11 E. If the court imposes a revocation under subsection C, paragraph 2  
12 of this section, provisions of the governing instrument shall be given effect  
13 as if the person who violated subsection A of this section or section  
14 13-1802, subsection B disclaimed all provisions revoked by the court or, in  
15 the case of a revocation of a nomination in a fiduciary or representative  
16 capacity, the person who violated subsection A of this section or section  
17 13-1802, subsection B predeceased the decedent.

18 F. Section 46-455, subsections F, G, H, I, K, L, M and P also apply to  
19 civil violations of this section.

20 G. The vulnerable adult or the duly appointed conservator or personal  
21 representative of the vulnerable adult's estate has priority to, and may  
22 file, a civil action under this section. If an action is not filed by the  
23 vulnerable adult or the duly appointed conservator or personal representative  
24 of the vulnerable adult's estate, any other interested person, as defined in  
25 section 14-1201, may petition the court for leave to file an action on behalf  
26 of the vulnerable adult or the vulnerable adult's estate. Notice of the  
27 hearing on the petition shall comply with section 14-1401.

28 H. Subsections A, B, C, D, E and F of this section do not apply to an  
29 agent who is acting within the scope of the person's duties as, or on behalf  
30 of, any of the following:

31 1. A bank, financial institution or escrow agent licensed or certified  
32 pursuant to title 6.

33 2. A securities dealer or salesman registered pursuant to title 44,  
34 chapter 12, article 9.

35 3. An insurer, including a title insurer, authorized and regulated  
36 pursuant to title 20.

37 4. A health care institution licensed pursuant to title 36, chapter 4  
38 that provides services to the vulnerable adult.

39 I. For the purposes of this section:

40 1. "Asset" includes all forms of personal and real property.

41 2. "Disposition or appointment of property" includes a transfer of an  
42 item of property or any other benefit of a beneficiary designated in a  
43 governing instrument.

44 3. "Governing instrument" means a deed, a will, a trust, a  
45 custodianship, an insurance or annuity policy, an account with pay on death

1 designation, a security registered in beneficiary form, a pension, a profit  
2 sharing, retirement or similar benefit plan, an instrument creating or  
3 exercising a power of appointment, a power of attorney or a dispositive,  
4 appointive or nominative instrument of any similar type.

5 4. "Position of trust and confidence" means that a person is any of  
6 the following:

7 (a) A person who has assumed a duty to provide care to the vulnerable  
8 adult.

9 (b) A joint tenant or a tenant in common with a vulnerable adult.

10 (c) A person who is in a fiduciary relationship with a vulnerable  
11 adult including a de facto guardian or de facto conservator.

12 (d) A person who is in a confidential relationship with the vulnerable  
13 adult. The issue of whether a confidential relationship exists shall be an  
14 issue of fact to be decided by the court based on the totality of the  
15 circumstances.

16 5. "Revocable" means a disposition, appointment, provision or  
17 nomination under which the vulnerable adult, at the time of or immediately  
18 before death, was alone empowered, by law or under the governing instrument,  
19 to cancel the designation in favor of the person who violated subsection A of  
20 this section or section 13-1802, subsection B, whether or not the vulnerable  
21 adult was then empowered to designate the vulnerable adult in place of the  
22 person who violated subsection A of this section or section 13-1802,  
23 subsection B or the vulnerable adult then had capacity to exercise the power.

24 Sec. 3. Legislative intent

25 The legislature intends by this act only to clarify existing law as  
26 enacted by the legislature and interpreted by the courts.